IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

GARY THELEN,

Plaintiff,

No. 4:04-cv-40035

VS.

WAKONDA CLUB,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

This matter comes before the Court on Plaintiff's Motion to Remand. A hearing was held on July 22, 2004. Scott Bandstra appeared for the Plaintiff; Gretchen Jensen appeared for the Defendant. The Court ruled from the bench, granting Plaintiff's motion and indicating this written Order would follow.

FACTS

On December 23, 2003, Plaintiff Gary Thelen filed this employment discrimination action against Defendant Wakonda Club alleging violations of the Age Discrimination Act, 29 U.S.C. § 623(A)(1) ("ADEA") and Iowa Civil Rights Act, Iowa Code § 216.2 (2001) ("ICRA"). On January 15, 2004, Defendant Wakonda Club timely removed the action to United States District Court pursuant to 28 U.S.C. § 1441(c). Defendant filed an answer on January 29, 2004.

No further Court action was taken in this case until June 3, 2004, when Plaintiff filed a stipulation of dismissal, voluntarily dismissing his ADEA claim. Defendant did not resist and signed the stipulation. Although the Court has not previously entered an order based upon the stipulation and dismissing the ADEA claim, that status was assumed for purposes of the current motion; and the Court will dismiss the ADEA claim as a part of this Order.

Contemporaneous with the stipulation, Plaintiff filed this motion to remand the remaining ICRA claim to state court (Clerk's No. 5). The parties filed a proposed scheduling order on June 15, 2004, which was entered by United States Magistrate Judge Bremer on June 16, 2004. An estimated five-day trial is set for the two-week period beginning July 11, 2005.

DISCUSSION

The parties concede that this Court has discretion to remand or retain jurisdiction pursuant to 28 U.S.C. § 1367(c).² Thelen argues the Court should remand this case to

¹ The Rule 16 deadline (120 days after filing) to file a proposed scheduling order was May 15, 2004.

² Plaintiff initially argued that pursuant to 28 U.S.C. § 1447(c), the case must be remanded to state court because the Court no longer retained jurisdiction over the remaining ICRA claim since the ADEA claim had been dismissed. However, as the Eighth Circuit stated in <u>Lindsey v. Dillard's, Inc.</u>, 306 F.3d 596, 598 (8th Cir. 2002), the federal court does not lack jurisdiction under 28 U.S.C. § 1447(c) simply because a plaintiff's federal question claim is dismissed. Rather, when a plaintiff's pendent state claims are closely enough related to the federal question claim that they form part of

state court to best serve "the principles of economy, convenience, fairness, and comity." <u>Carnegie-Mellon Univ. v. Cohill</u>, 484 U.S. 343, 357 (1988). For precisely the same reasons, Wakonda argues the Court should retain jurisdiction.

Title 28 U.S.C. § 1367 provides in pertinent part,

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

. . .

- (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if
 - (1) the claim raises a novel or complex issue of State law,
 - (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
 - (3) the district court has dismissed all claims over which it has original jurisdiction, or
 - (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367 (2000). "Under §§ 1367(c) and 1441(c), a court is not required to remand state law claims when the only federal claim has been dismissed. Instead, the

the same case or controversy, the district court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367. <u>Id.</u> Therefore, if the federal claims are dismissed, the court retains supplemental jurisdiction over the state law claims and may in its discretion remand to state court or retain the case. <u>Id.</u> at 599 (citing <u>Carnegie-Mellon Univ.</u>, 484 U.S. at 357).

district court maintains discretion to either remand the state law claims or keep them in federal court." <u>Lindsey v. Dillard's, Inc.</u>, 306 F.3d 596, 599 (8th Cir. 2002).

In <u>Carnegie-Mellon Univ. v. Cohill</u>, the Supreme Court offered guidance for courts addressing whether to remand pursuant to § 1367. <u>Carnegie-Mellon Univ.</u>, 484 U.S. at 357. The Supreme Court reasoned that "in the usual case in which all federallaw claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine – judicial economy, convenience, fairness, and comity – will point toward declining to exercise jurisdiction over the remaining state-law claims." <u>Id.</u> at 350 n.7.

Applying the principles of § 1367(c) and <u>Carnegie</u> to the present case, Thelen argues remand is appropriate. Although the ICRA claim does not raise a novel or complex issue of state law or predominate over the ADEA claim, the ADEA claim, giving this Court original jurisdiction, has been dismissed. Nor are there are any exceptional circumstances compelling this Court to retain jurisdiction.

Wakonda argues remand is inappropriate for several reasons. First, Thelen waited over four months to dismiss the ADEA claim and move for remand. Second, the parties have filed a scheduling order and are moving forward in conducting formal discovery. Third, remand will delay advancement of the case, waste judicial resources, and permit forum manipulation. Wakonda suggests this Court should be guided by the

district court's decision to retain jurisdiction in <u>Hansen v. Sioux By-Products</u>, 988 F. Supp. 1255, 1261 (N.D. Iowa 1997).

In Hansen, the plaintiff filed an action in Iowa district court asserting violations of the Americans with Disabilities Act ("ADA") and Iowa public policy against retaliation.

Id. at 1257. Defendant timely removed the action to federal court pursuant to 28 U.S.C. § 1441. Id. at 1258. Eleven months after the case had been removed, in the face of defendant's motion for summary judgment, plaintiff conceded that he had not generated a genuine issue of material fact on his ADA claim. Id. at 1261. The court granted defendant's motion as to the ADA claim and then addressed whether the state law retaliation claim should be remanded. Id. Applying the principles of economy, convenience, fairness, and comity, the Hansen court found that retaining jurisdiction was appropriate because the court had already invested sufficient resources in pre-trial administration, the case was set for trial in three months, and it was uncertain whether the state court could provide a comparable trial date. Id. at 1264.

<u>Hansen</u> is distinguishable from the present case for several reasons. First, in <u>Hansen</u>, the plaintiff conceded his federal claim lacked merit once the defendant moved for summary judgment. <u>Id.</u> at 1261. In the present case, Thelen made no such concession about the viability of his federal claim. He did however, voluntarily dismiss the

federal claim early in litigation before Wakonda filed any dispositive motion.³ Second, little judicial resources have been expended on the present case, as compared to Hansen, in which dispositive motion practice had commenced. To the extent the Court has entered a scheduling order, judicial resources have been consumed. However, the filing of a scheduling order is a routine procedure performed essentially by the parties with little Court involvement. For instance, in the present case, the only change the Court made to the parties' proposed scheduling order was the trial ready date. Third, this case is set for trial in a year, not three months as in Hansen. As the parties conceded at the hearing, it is likely a comparable, if not earlier, trial date can be obtained in state court. Fourth, the modest amount of discovery that has been completed thus far will be easily transferable to a state court action. The facts which compelled the Hansen court to retain jurisdiction are not present here, and the principles of economy, convenience, fairness, and comity are not best served by retaining supplemental jurisdiction.⁴

³ Wakonda argues Thelen was not timely in dismissing the action as the stipulation came five months after the case was commenced and four months after the removal to this Court, after a scheduling order had been executed and discovery commenced. While the Plaintiff might have acted earlier, the delay does not appear unduly long in light of the normal pace of such litigation, the early status of discovery, and a ready for trial date a year away.

⁴ Wakonda also cites three cases from the Fifth Circuit urging this Court to similarly retain supplemental jurisdiction. <u>Unida v. Levi Strauss & Co.</u>, 986 F.2d 970, 975 (5th Cir. 1993) (affirming the district court's denial of plaintiffs' motion to dismiss

Thelen argues this case is factually the same as <u>Lindsey v. Dillard's, Inc.</u>, 306 F.3d at 596, and this Court should similarly remand the case to state court. In <u>Lindsey</u>, the plaintiff filed a sexual harassment claim in Missouri state court. <u>Id.</u> at 597. More than one year later, after the parties had conducted initial discovery and defendant had filed a motion for summary judgment, the plaintiff moved to amend her complaint adding retaliation and ADA claims. <u>Id.</u> Defendant removed the action to federal court pursuant to § 1441. <u>Id.</u> Plaintiff again moved to amend her complaint, voluntarily dismissing the ADA claim, and simultaneously moved to remand, arguing that the federal court no longer had subject matter jurisdiction. <u>Id.</u> at 598.

their federal question claims and motion to remand remaining claims to state court reasoning the motions had been made more than one and one-half years after removal, substantial discovery had been conducted, and defendant's motion for summary judgment had been pending for more than five months); Brown v. S. Bell Tel. Co., 901 F.2d 1250, 1255 (5th Cir. 1990) (affirming the district court's decision to retain the remaining state law emotional distress claim after granting summary judgment in favor of defendant on plaintiff's federal question claims that formed the basis of removal jurisdiction); Guillot v. Bellsouth Telecomm., Inc., 923 F. Supp. 112, 114 (W.D. La. 1996) (retaining jurisdiction after plaintiff voluntarily dismissed his federal question claims which formed the basis of removal jurisdiction reasoning substantial judicial resources had been expended in the fifteen months since the case had been removed as the court had ruled on discovery disputes, cross-claim summary judgment motions and third-party demands). All these cases are distinguishable from the present case. In those cases, substantial time had elapsed from the time of removal to the dismissal of (or motion to dismiss) the federal question claims, appreciable discovery had occurred, and substantial judicial resources had been expended.

The Lindsey court granted plaintiff's motion pursuant to § 1447(c). Id. On appeal, defendant argued the district court erred because diversity jurisdiction existed; therefore, federal jurisdiction was proper pursuant to 28 U.S.C. § 1332 even in the absence of a federal question. Id. The Eighth Circuit noted that when removal is based on a federal question and all federal claims drop out, a district court retains supplemental jurisdiction over remaining state law claims and is not mandated to remand under 28 U.S.C. § 1447(c). Rather, in such a case, a district court has discretion to remand or retain the claims under 28 U.S.C. § 1367. Id. at 598-99. The Eighth Circuit clarified that the district court's remand was proper pursuant to 28 U.S.C. § 1367(c) and not mandated by 28 U.S.C. § 1447(c) as the district court had reasoned. Id. at 599. The court went on to find that defendant had not asserted removal based on diversity jurisdiction under 28 U.S.C. § 1441(b) and could not appeal remand on that basis. Id. at 600.

Lindsey lends strong support for remand in the present case. First, the Eighth Circuit gave deference to the district court's decision to remand the case when the plaintiff had voluntarily dismissed the federal question claim which formed the basis of removal jurisdiction. <u>Id.</u> at 598-99. Second, the Eighth Circuit supported the decision despite strong evidence that the plaintiff was "manipulating" the forum. There, plaintiff did not allege a federal claim in her original state court petition. She amended more

than one year later, adding retaliation and an ADA claim in an attempt to survive defendant's motion for summary judgment. <u>Id.</u> at 598. When defendant responded by removing the case to federal court, the plaintiff immediately and voluntarily dismissed her federal claim and moved to remand the case to state court. <u>Id.</u> No such maneuvering is present here. Thelen alleged his federal claim in his original petition and not in an amended complaint, and Thelen could have prevented the removal by pleading his claims only under state law. Nor was Thelen's voluntary dismissal made in response to a dispositive motion filed by the Defendant.

CONCLUSION

For the foregoing reasons, the Court finds no affirmative reasons to retain this case. The ADEA claim which gave this Court original jurisdiction is herein dismissed. That claim did not predominate over the ICRA claim which remains. Although there are no novel or complex issues of state law that would encourage remand to that court system, neither are there any exceptional circumstances suggesting the federal forum is better suited to resolve this matter.

The decision to remand or retain jurisdiction over the remaining ICRA claim is clearly left to the Court's discretion. 28 U.S.C. § 1367(c). Under the circumstances of this case, the Court is compelled for jurisprudential reasons to remand this case to state court. Carnegie-Mellon Univ., 484 U.S. at 350 n.7; Lindsey, 306 F.3d at 598-99.

Based upon the prior Stipulation Re Dismissal of ADEA Claims (Clerk's No. 6), the claims asserted pursuant to the ADEA are **dismissed**. Plaintiff's Motion to Remand (Clerk's No. 5) is **granted**. **The above-entitled action is remanded to the Iowa District Court for Polk County**.

IT IS SO ORDERED.

Dated this 23rd day of July, 2004.